ATTORNEY FOR APPELLANT:

STEVEN E. RIPSTRA
Ripstra Law Office
Jasper, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IRA L. WILSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 63A01-0712-CR-554
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Jeffrey L. Biesterveld, Judge
Cause No. 63C01-0610-FD-514

May 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ira L. Wilson appeals his conviction, following a jury trial, for operating a vehicle while intoxicated[1] as a Class C misdemeanor, enhanced to a Class D felony by reason of a prior conviction.[2] On appeal, he raises the following issues, which we restate as follows:

I. Whether the trial court abused its discretion in admitting the opinion testimony of the arresting officer that Wilson was intoxicated.

II. Whether the evidence was sufficient to support Wilson's conviction.

We affirm.[3]

FACTS AND PROCEDURAL HISTORY

On the evening of October 7, 2006, Deputy Brad Jenkins of the Pike County Sheriff's Department was patrolling in a marked car on Main Street in Petersburg, Indiana. While traveling southbound on Main Street, Deputy Jenkins noticed a car driving northbound at a high rate of speed with its headlights off. Deputy Jenkins turned his vehicle around, engaged his emergency lights, and attempted to stop the vehicle. After following the vehicle for about eight blocks, Deputy Jenkins pulled the car over and approached the driver, who was later identified as Wilson.

Deputy Jenkins asked the driver for his license and registration. Wilson, whose breath smelled of alcohol, fumbled around and had trouble getting the documents out of his wallet. Sergeant Chad McClellan, of the Petersburg Police Department, was nearby and stopped at

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[1] *See* IC 9-30-5-2(a).

[2] *See* IC 9-30-5-3.

[3] The jury also found Wilson guilty of improper headlights, as a Class C infraction, on the basis that he failed to use his headlights on the evening in question. *See* IC 9-19-6-3. Wilson does not appeal that judgment.

the scene to assist in Wilson's arrest. Sergeant McClellan asked Wilson if he had been drinking, and Wilson admitted that he had consumed a couple of drinks. *Tr*. at 53. Sergeant McClellan noted Wilson's watery and bloodshot eyes, his unsteady balance, his slurred speech, and his trouble comprehending the officer's questions. *Id*. Sergeant McClellan administered various field sobriety tests, including the "finger count, One-Leg Stand, [and] Nine Step Walk-and-Turn."[4] *Id*. On the basis of Wilson's having failed or performed poorly on these tests, Sergeant McClellan opined that Wilson was intoxicated. *Id*. at 54-61.

A jury convicted Wilson of operating a vehicle while intoxicated, as a Class C misdemeanor. This conviction was enhanced to a Class D felony by reason of a prior conviction. Wilson now appeals.

DISCUSSION AND DECISION

I. Officer's Testimony

Wilson first contends that the trial court abused its discretion in allowing, over his objection, Sergeant McClellan to testify that he believed Wilson was intoxicated on the night in question. Specifically, Wilson contends that the State failed to lay a proper foundation for Sergeant McClellan's opinion testimony. The standard of review for admissibility of evidence is an abuse of discretion. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

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[4] Sergeant McClellan also testified that he gave Wilson the "Gaze Nystagmus test." *Tr*. at 53. Because both parties contend that this test was never completed, *Appellant's Br*. at 7, *Appellee's Br*. at 3, we do not consider on appeal whether the Stated laid an appropriate foundation in connection with this test.

Here, Sergeant McClellan's opinion regarding Wilson's intoxication was, in part, based on the results of the field sobriety tests. In *Smith v. State*, 751 N.E.2d 280 (Ind. Ct. App. 2001), our court addressed the rationale for laying a foundation before admitting the results of scientific tests. We said:

> Before the results of scientific tests are admissible, the proponent of the evidence must lay a proper foundation establishing the reliability of the procedure used. "Inherent in any reliability analysis is the understanding that, as the scientific principles become more advanced and complex, the foundation required to establish reliability will necessarily become more advanced and complex as well." *McGrew v. State*, 682 N.E.2d 1289, 1292 (Ind. 1997). The converse of that rule is also true. *See id*.

Smith, 751 N.E.2d at 282.

In *Smith*, our court addressed the question of to what extent field-sobriety-test-results are subject to foundational requirements for admission as evidence. *Id*. This was a question of first impression. Citing to the Illinois Appellate Court, our court agreed:

> "the 'walk the line,' 'one leg stand,' and 'finger to nose,' [tests] are not so abstruse as to require a foundation other than the experience of the officer administering them." *People v. Sides*, 199 Ill. App.3d 203, [], 556 N.E.2d 778, 779 (1990). We agree that the investigating officer's training and experience is the only evidentiary foundation required for the admission of field sobriety tests.

Id.

Sergeant McClellan testified that he had been a police officer for eight and a half years, had received an associates degree from Vincennes University in law enforcement, and had attended the Indiana Law Enforcement Academy. *Tr*. at 51. He further testified that he had been taught both how to administer field sobriety tests and how to recognize the signs of intoxication. *Id*. During the traffic stop, Sergeant McClellan noticed that Wilson had watery,

bloodshot eyes, was unsteady and off balance, was slurring his words, and was having trouble understanding Sergeant McClellan's questions. Wilson also either failed or performed badly on various field sobriety tests. There was enough evidence for Sergeant McClellan to form an opinion as to Wilson's intoxication. The trial court did not abuse its discretion in admitting this testimony.[5]

II. Sufficiency of the Evidence

Wilson next contends that there was insufficient evidence to support his conviction for operating a vehicle while intoxicated as a Class C misdemeanor. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor assess the credibility of the witnesses. *Taylor v. State*, 820 N.E.2d 756, 759 (Ind. Ct. App. 2005), *trans. denied*. Rather, we look to the evidence most favorable to the judgment and draw reasonable inferences therefrom. *Id.* The conviction will be upheld if there is substantial evidence of probative value from which the trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

In order to convict Wilson of operating a vehicle while intoxicated as a Class C misdemeanor, the State was required to prove that he: 1) operated a motor vehicle; 2) while intoxicated. IC 9-13-2-86 "defines 'intoxicated' as being under the influence of alcohol or another substance 'so that there is an impaired condition of thought and action and the loss of

[5] Deputy Jenkins also testified that upon approaching Wilson he could smell the odor of alcohol. *Tr.* at 33. He also testified that Wilson had his lights off, had been driving over the speed limit, had trouble with manual dexterity while producing his driver's license, had bloodshot eyes, and had slurred speech. *Id.* at 31. Wilson fails to argue that the trial court abused its discretion in admitting this testimony. The testimony of

normal control of a person's faculties.'" *Wells v. State*, 848 N.E.2d 1133, 1146 (Ind. Ct. App. 2006), *reh'g granted on other grounds*, 853 N.E.2d 143 (Ind. Ct. App. 2006), *trans. denied*.

The first element is not in dispute—Deputy Jenkins stopped Wilson while he was operating his vehicle on the roadway. With respect to intoxication, Sergeant McClellan testified that Wilson admitted at the scene that "[h]e'd had a couple" of drinks. *Tr*. at 53. Wilson confirmed this fact during his testimony at trial when he stated that he had "a couple of shots of whiskey" on the night in question. *Id*. at 79. Wilson drank these shots at the Silver Dollar between 9:15 p.m. and approximately 10:30 p.m. . *Id*. at 85-86. Police stopped Wilson driving in Petersburg soon thereafter.

The jury also learned that, earlier in the evening, Wilson had gone to the Moose Lodge, where he drank a few more shots of whiskey. *Id*. at 90. At trial, the State asked Wilson whether he was intoxicated that night, to which Wilson responded: "I don't feel like I was that much intoxicated but apparently I didn't turn my headlights on, so." *Id*. at 84. There was also evidence that the officers detected the smell of alcohol emanating from Wilson, Wilson had watery, bloodshot eyes, his balance was unsteady, he was slurring his words, he fumbled for his identification, and he had trouble understanding Sergeant McClellan's questions. *Id*. at 53. Sergeant McClellan administered various field sobriety tests, all of which Wilson either failed or had difficulty completing. *Id*. at 55-59.

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the arresting officer alone is sufficient to uphold a conviction. *Wright v. State*, 772 N.E.2d 449, 460 (Ind. Ct. App. 2002).

In addition to the testimony offered by the police officers, the jury learned that Wilson suffers from and receives treatment for Post-Traumatic Stress Disorder, has 100% military service connected disability, and that some of his medications affect his comprehension.[6] *Id.* at 77-78. On appeal, Wilson contends that these factors were not properly considered in the determination that Wilson was intoxicated. We disagree.

Wilson's objection to the verdict is an invitation for this court to reweigh the evidence, which we cannot do. The jury heard all the arguments presented to our court and determined that Wilson was intoxicated. The evidence before the jury was sufficient to sustain Wilson's conviction for operating a vehicle while intoxicated. *See Luckhart v. State*, 780 N.E.2d 1165, 1167-68 (Ind. Ct. App. 2003), *disapproved of on other grounds by Ham v. State*, 826 N.E.2d 640 (Ind. 2005) (holding that evidence that defendant smelled of alcohol, had bloodshot eyes and slurred speech, and had difficulty balancing himself was sufficient to establish intoxication).

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.

[6] Wilson also contends that his father physically abused both him and his mother, and that he suffered a brain injury as the result of a 2007 accident. However, Wilson fails to highlight how the physical abuse or an injury that occurred *after* the 2006 arrest are relevant.